HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.742 OF 2006

Between:

The State Election Commission
. . .Appellant

AND

K.Subbarami Raju
. . .Respondents

Counsel for the appellant : Shri Nuty Ram Mohan Rao

Counsel for the respondent : Shri D.Srinivas

Dated: 29th June, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

This appeal is directed against order dated 27.06.2006 passed by the learned Single Judge in W.P.M.P.No.16042 of 2006 in W.P.No.12924 of 2006 whereby he suspended the operation of letter No.329/SEC-B1/2006 dated 11-06-2006 issued by the State Election Commission (for short 'the Commission') whereby the candidates contesting election to various Panchayat Raj Bodies have been directed to furnish list of persons to be appointed as polling agents at least one day before the date of poll.

In the writ petition filed by him, respondent No.1 questioned the legality of the direction issued by the Commission by contending that the same is ultra vires to the provisions of Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') and the Andhra Pradesh Panchayat Raj (Conduct of Elections) Rules, 2006 (for short 'the Rules'). He relied on order dated 23-06-2006 passed by the High Court in WPMP No.15806 of 2006 in Writ Petition No.12718 of 2006, whereby operation of similar instructions issued by the Commission vide Circular No.329/SEC/P1/2006 dated
24-04-2006 was suspended and pleaded that in the absence of any specific rule to that effect, the Commission cannot direct the candidates to submit names of polling agents at least one day before the date of polling.

On a consideration of the averments contained in the writ petition and hearing the advocates for the parties, the learned Single Judge vide his order dated 27.06.2006 stayed operation of letter dated 11.06.2006 issued by the Commission.

Shri Nuty Ram Mohan Rao argued that the learned Single Judge gravely erred by suspending operation of direction given by the Commission ignoring the fact that the latter has the power under Section 201 of the Act read with Rule 97 of the Rules to issue direction for free and fair conduct of election. Learned counsel further argued that the direction given by the Commission requiring the candidates to submit names of the polling agents at least one day before the date of actual polling cannot be declared ultra vires to the provisions of the Act or the Rules because there is no contrary provision therein. Shri Nuty Ram Mohan Rao pointed out that, vide circular No.329/SEC-B1/2006 dated 24.04.2006, the Commission had directed the candidates to submit names of the polling agents at least three days before the date of election, but after consulting the representatives of the political parties, time was reduced to three days. Learned counsel emphasized that the object underlying the direction given by the Commission is to ensure that unscrupulous and anti-social elements are not able to enter the polling booths as agents of the candidates and jeopardize free and fair election.

Sri D. Srinivas, learned counsel for respondent No.1 laid considerable emphasis on the language of Sub-Rules (1), (2), (3) and (5) of Rule 19 of the Rules and argued that in the absence of any statutory enumeration of time, direction given by the Commission to the candidates to furnish the names of polling agents one day before the date of actual election is liable to be declared as ultra vires to the rules. Sri Srinivas submitted that if the name of polling agent is disclosed one day before the date of actual polling, there is every likelihood of his being kidnapped and subjected to physical harm by the opponents and, therefore, the candidates should have freedom to furnish the name of their polling agents on the date of actual election. He further argued that in terms of sub-rule (3) of Rule 19, the polling

agent is required to submit the instrument of appointment before the Presiding Officer before being admitted in the polling booth and, therefore, there is no justification to compel the candidates to furnish the names of the polling agents one day before the election.

We have thoughtfully considered the respective arguments. For appreciating the arguments of the learned counsel in a correct perspective, it will be useful to notice the provisions of Section 201 of the Act and Rule 19 of the Rules. The same read as under:

> "**201. Powers and functions of the Andhra Pradesh Election Commissioner for Local Bodies:**
>
> (5) All elections to the Panchayat Raj Institutions shall be held under the supervision and control of the Andhra Pradesh Election Commission for Local Bodies and for this purpose it shall have power to give such directions as it may deem necessary to the Commissioner, District Collector or any officer or servant of the Government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under this Act.
>
> (2) The preparation of electoral rolls for the conduct of all elections under the Act shall be done under the supervision and control of the Andhra Pradesh Election Commission for Local Bodies.
>
> (3) For the purposes of this section the Government shall provide the Andhra Pradesh Election Commission for Local Bodies with such staff as may be necessary.
>
> (4) On the request of the Andhra Pradesh Election Commission for Local Bodies, the State Government shall place at the disposal of the Commission such staff of the State Government, Gram Panchayats, Mandal Parishads and Zilla Parishads for the purpose of conduct of elections under this Act.
>
> (5) The Andhra Pradesh Election Commissioner for Local Bodies may, subject to control and revision, delegate his powers to such officers as he may deem necessary."

Rule 19: Appointment of Polling Agent:

1) The number of polling agents that may be appointed by a contesting candidate or his election agent, shall, in respect of each polling station, be one agent and a relief agent.
2) Every such appointment shall be made in Form XII and shall be made over to the polling agent for production at the polling station.
3) No polling agent shall be admitted into the polling station unless he has delivered to the Presiding Officer the instrument of his appointment under sub-rule (2) after duly completing and signing before the Presiding Officer the declaration contained therein.
4) A polling agent may perform such functions in connection with the poll as are authorized by or under these rules, to be performed by a polling agent.
5) Any revocation of the appointment of a polling agent shall be signed by the candidate or his election agent, as the case may be. Such revocatioin shall operate from the date on which it is lodged with the Regurning Officer. In the event of such a revocation or of the death of a polling agent before the close of the poll the candidate or his election agent may appoint another polling agent at any time before the poll is closed and shall forthwith give notice of such appointment as laid down in sub-rule (2)."

The relevant extracts of letters No.329/SEC-B1/2002 dated 24-4-2006 and 11-6-2006 issued by the State Commission are also reproduced below:

Letter dated 24-4-2006

1. Under Rule 19 of the AP PR (Conduct of Elections) Rules, 2006, contesting candidate for the offices of the Member MPTC, Member ZPTC, Member or Sarpanch Gram Panchayat or his election agent may appoint one polling agent and one relief agent for each polling station. However, at any Polling Station at any given point of time only one polling agent or relief agent of a candidate could be present but not both.

2. The role of polling agent is to observe the polling i.e., whether the poll process is orderly, free and fair. The polling agent can perform the role only if he is from local area and

familiar with the identity of voters of that particular booth. A person appointed as polling agent from outside the local area and not familiar with the identity of voters will not serve the purpose for which he is appointed. Moreover, in such cases, there is always a possibility of bringing in antisocial elements, rowdy sheeters etc. from outside in the guise of polling agents to intimidate the voters, polling personnel or polling agents of other candidates during the poll process.

3. After careful consideration and in the interest of free and fair poll, the State Election Commission hereby issues the following guidelines with regard to appointment of polling agents by contesting candidates.

i) A person to be appointed as polling agent should be –
   a) A resident of the concerned Mandal in case of elections to Mandal Parishad and Zilla Parishad.
   b) A resident of the concerned gram Panchayat in case of elections to gram panchayats.

ii) The Returning officers shall inform the contesting candidates to furnish the names and address of the persons whom they intend to appoint as polling agents or relief agents at least three days before date of polling.

iii) The Returning Officer should cause verification of the antecedents of the person whose names are submitted by the candidates by the police authorities, in cases of doubt.

iv) The antecedent verification shall be done by the police authorities of the area.

v) A person having criminal record or having a past record of indulging in electoral malpractice or otherwise having a bad reputation of rowdy sheeter etc. having potential to intimidate the voters shall not be appointed as polling agent.

vi) Contesting candidates intending to appoint a person from outside the local area, for any exceptional reasons, shall make an application to the Returning Officer concerned in this behalf at least three days before the date of poll. The Returning Officer may permit such appointment after such further inquiry in addition to the procedure stipulated in clause (ii) above, as he may deem fit about the antecedents of person proposed to be appointed as agents from outside the local area.

vii) The three days time limit prescribed in clauses (ii) and (vi) can be relaxed by the Returning Officers, for appointment of a regular polling agent, in case of death, disability and the like, of a polling agent already appointed, so as to enable the appointment of a substitute."

Letter dated 11-6-2006

"In the reference cited, instructions were issued, inter alia, that every contesting candidate in the ensuing elections to PR Bodies shall furnish a list of persons to be appointed as polling agents at least 3 days before the date of poll to the returning officers concerned in order to verify the antecedents of such persons to bar persons (outsiders) having criminal record, rowdy sheeters and antisocial elements from being appointed as polling agents in the interest of conducting free and fair poll.

In the Political Parties meeting held on 6-6-2006, most of the political parties have requested the State Election Commission to re-examine these orders, as furnishing the list of persons to be appointed as polling agents three days in advance will give scope for the rival candidates and mischievous elements to kidnap or threaten the persons included in the list for political gains. The representatives of the left parties expressed the apprehension that their party workers who are actively involved in the protest against government policies such as fuel price hike, bus fair hike etc., and against whom cases are booked for indulging in the said protest are barred from being acting as polling agents if the orders of SEC in the reference cited are implemented.

The State Election Commission reconsidered the matter in the light of the views expressed by various political parties and hereby modifies instructions issued in the reference 1st cited as follows:

i) Every contesting candidate shall furnish list of persons to be appointed as polling agents at least one day before the date of poll to the Returning Officer concerned.

ii) The Returning Officers are authorized to get the antecedents of the persons to be appointed as polling agents verified by police authorities where a complaint is made to them that the person to be appointed as polling

agent is a rowdy sheeter or anti-social element or a person having criminal history or history of electoral offence or malpractice.

iii) The Returning Officer is also authorized to order for suo motu enquiry wherever he feels that the person to be appointed is a suspicious character.

iv) A person having criminal record or having a past record of indulging in electoral malpractices or otherwise having bad reputation as rowdy sheeter with a potential to intimidating voters shall not be appointed as polling agent.

v) A person to be appointed as a polling agent should be –

1) A registered voter of the concerned Mandal in case of elections to Mandal Parishad and Zilla Parishad.

2) A registered voter of the concerned gram Panchayat in case of elections to gram Pancyahats."

Since the writ petition is yet to be finally adjudicated by the learned Single Judge, we do not consider it proper to express a conclusive opinion on the tenability of the writ petitioner's challenge to the direction issued by the Commission. However, we are prima facie convinced that the language of Rule 19 of the Rules does not restrict the power vested in the Commission under Section 201 of the Act to give appropriate directions for ensuring free and fair election. Rule 19 (1) and (2) of the Rules contemplate appointment of the polling agent of the candidates. Rule 19 (3) lays down that the polling agent should produce instrument of appointment before the Presiding Officer as a condition precedent for admission into polling booth. This means that the appointment of the polling agent precedes his admission in the polling booth. The argument of Sri D. Srinivas is that in terms of Rule 19 (3), a candidate is required to submit application for appointment of polling agent only before the Presiding Officer and, therefore, the Commission cannot compel him to submit his name one day before the poll is clearly based on a misconstruction of the scheme of Rule

19. A conjoint reading of sub-rules (1) (2) and (3) of Rule 19 makes it clear that there is a clear distinction between the concept of appointment of polling agent by the contesting candidate and admission of such agent into the polling station. The very fact that Rule 19 (3) contemplates submission of instrument of appointment to the Presiding Officer shows that power to appoint polling agent vests in someone else and not the Presiding Officer. The only other authority which controls the process of election is the Returning Officer. Therefore, an application for appointment of polling agent has necessarily to be filed before the Returning Officer and it is he who, after making necessary enquiry and getting antecedents of the person proposed to be appointed as polling agent verified, has to issue instrument of appointment of a particular person as polling agent.

We are further of the view that the reason put forward on behalf of the Commission to justify the direction contained in the impugned circular is logical and rationale. Article 243-K (1), which is pari materia to Article 324, declares that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. In terms of Section 201 of the Act, the Commission is not only entitled, but is duty bound to ensure free and fair election. The direction issued by the Commission for submission of the names of the persons intended to be appointed as polling agents at least one day before the date of poll is intended to ensure that no anti-social element is able to sneak into the polling arena as a polling agent and disturb the process of election. If the candidates are allowed to nominate polling agent on the date of poll, it will be impossible for the Presiding Officer to check their antecedents and credentials and there is every likelihood of disruption of the poll by unscrupulous elements. Therefore, it is not possible to find any fault with the instructions issued

by the Commission, which are subject matter of challenge in the writ petition filed by respondent No.1. As a corollary, we hold that the learned Single Judge committed a serious error by suspending operation of order dated 11-6-2006.

Before concluding, we deem it proper to take notice of submission made by learned counsel for respondent No.1 that in the first phase of election, the Commission has implemented the direction given by the learned Single Judge and, therefore, appeal should not be entertained. In the context of this submission of learned counsel, it is sufficient to observe that every public authority including the Commission is bound to comply the direction given by the Court, but this adherence to the basic principle of rule of law cannot be made basis for depriving the Commission of its right to challenge legality and correctness of the direction given by the learned Single Judge.

In the result, the appeal is allowed and order dated 27.06.2006 passed by the learned Single Judge in W.P.M.P.No.16042 of 2006 is set aside.

While disposing of the appeal in the manner indicated above, we make it clear that this order will not prejudice final adjudication of the writ petition filed by respondent No.1.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 29.06.2006

Note:
Office is requested to mark L.R. copy
(By order)
svs